IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 12TH JANUARY 2007 / 22ND PAUSHA 1928

Crl.MC.No. 3778 of 2006()

CMP NO.4435/06 ANNEUXRE-5 IN
CC.447/2003 of JUDL.MAGISTRATE OF FIRST CLASS-I, ERNAKULAM

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PETITIONER: COMPLAINANT

M.A.K.AGRO COMMODITIES TRADING PVT.LTD.,
REP. BY ITS MANAGING DIRECTOR,
M.A.K.AZAD, G 211, PANAMPILLY NAGAR,
MAIN AVENUE ROAD, PANAMPILLY NAGAR,
KOCHI-36.

BY ADV. SRI.VARGHESE C.KURIAKOSE
SRI.PRAVEEN K. JOY
SMT.THANKOM.G

RESPONDENTS: STATE AND ACCUSED

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1. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. M/S.RABIA SEA FOODS,
20/550, NAMBIAPURAM ROAD,
PALLURUTHY, KOCHI-6.

3. K.A.HASHIM, PROPRIETOR,
M/S.RABIA SEA FOODS, 20/550,
NAMBIAPURAM ROAD, PALLURUTHY,
KOCHI-6.

4. K.K.ASHRAF, MANAGER,
M/S.RABIA SEA FOODS, 20/550, NAMBIAPURAM ROAD,
PALLURUTHY, KOCHI-6.

BY PUBLIC PROSECUTOR SRI. THOMAS JOHN.
SRI.P.M.KUNJIMOIDEENKUTTY
SRI.P.A.MOHAMMED ASHROF
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN
SMT.SHEENA SAMUEL

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 3778 OF 2006

Dated this the 12th day of January, 2007

ORDER

The petitioner is the complainant in a private complaint filed as early as on 11/5/03. In the complaint allegations were raised under Secs.409 and 420 read with Sec.34 of the IPC. Pre-charge enquiry was conducted and the complainant was examined as P.W.1 only on 2/6/05. No other evidence was adduced and the evidence at that stage was closed. Thereupon, the court framed charges against the accused under Sec.406 read with Sec.34 of the IPC. The accused pleaded not guilty. Case was posted for further cross-examination of P.W.1. P.W.1 was further cross-examined on 26/7/06. Thereafter, the case underwent many adjournments; but no other witness was examined. On 15/9/06, when the matter came up, no other witness was produced, but the petitioner filed Annexure-2 application along with a list of documents, a copy of which is produced as Annexure-3. The said application was opposed by the accused who filed

objections, a copy of which is produced as Annexure-4. The learned Magistrate came to the conclusion that the petition filed under Sec.311 of the Cr.P.C. is not liable to be allowed. Accordingly, the learned Magistrate proceeded to pass the impugned order, a copy of which is produced as Annexure-5.

2. The petitioner claims to be aggrieved by the impugned order and has come to this Court with a prayer that the powers under Sec.482 of the Cr.P.C. may be invoked in his favour to interfere with the impugned order.

3. What is the grievance? According to the learned counsel for the petitioner, the petitioner wanted certain additional documents to be received in evidence and P.W.1 – the complainant, to be recalled for that purpose. It is not correct to say that the petitioner wanted P.W.1 to be recalled and additional evidence to be adduced solely for the purpose of altering the charges. The real purpose of recalling P.W.1 and marking of the additional documents were to fortify the charges already framed. Such evidence may incidentally have persuaded the learned Magistrate to alter the charges also. The learned Magistrate has misconstrued the prayer as one to adduce further evidence to justify a request to alter the charge. This, in short, is the contention.

4. Right to speedy trial has been recognised as an incident of the fundamental right under Art.21 of the Constitution. Trial cannot be an endless dilatory procedure. The complaint in this case was filed as early as on 11/5/2003 and the complainant was examined at long last on 2/6/05 in the enquiry under Sec.244(1) of the Cr.P.C. The complainant, as admitted by him, did not produce any of the requisite documents which are now produced. Why did he not produce the documents earlier? The short explanation offered in Annexure-2 is stated in the petitioner's own words as follows:

> "The petitioner did not produce the documents earlier, as he had kept his documents in his native place at Madurai. Interest of justice therefore requires that the petitioner be permitted to be recalled and examined."

5. I find the explanation offered by the petitioner to be absolutely unjustified. The petitioner's inaction affects the rights of the respondents. Such meaningless and endless protraction of the trial would necessarily infringe the rights of the respondents for speedy trial. The complainant, who has

come to court with allegations against the accused persons, is expected to produce all his evidence along with the complaint or at least before the trial commences.

6. The impression that any and every error committed by a litigant in the conduct of his case can be set right and courts in their anxiety to do justice would always permit the litigant to start the game afresh has contributed in no mean measure to the scandalous delay in the judicial process. The petitioner was certainly not justified in not keeping the relevant documents at his native place at Madurai when he filed a complaint on 11/5/03 and when he went for the enquiry under Sec.244(1) of the Cr.P.C. long later on 2/6/05. The sequence of events in this case which already narrated does reveal to me convincingly that this is not a fit case where the extraordinary inherent powers available to this Court under Sec.482 of the Cr.P.C. can or ought to be invoked in favour of the petitioner who is guilty of contumacious laches, on his own showing, in the prosecution of his cause. It cannot be lost sight of that this inadequacy on his part is operating to the detriment of the right of the respondents/ accused.

7. I do not, in these circumstances, find any justification in the prayer to set aside the impugned order by invocation of the

jurisdiction under Sec.482 of the Cr.P.C.

8. This Crl.M.C. is, accordingly, dismissed.

9. The learned counsel for the respondents submits that the trial has been dragging on from 2003. She prays that a direction may be issued to the learned Magistrate to dispose of the case expeditiously.

10. In the facts and circumstances of this case, even without any specific direction from this Court, the learned Magistrate must make every endeavour to dispose of the case expeditiously. I direct that the learned Magistrate must dispose of the case as expeditiously as possible – at any rate, within a period of four months from the date on which a copy of this order is placed before the learned Magistrate.

11. Issue copy to the learned counsel for the respondent/ complainant.

(R. BASANT, JUDGE)

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